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**Vince & Sons Co. and Jo Mo Enterprises, Inc. d/b/a  
Vince & Sons Pasta, alter-ego and/or Golden  
State Successor and United Food and Commer-  
cial Workers Local 1546.** Case 13–CA–123828

February 17, 2016

**SUPPLEMENTAL DECISION AND ORDER**

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA  
AND HIROZAWA

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On March 31, 2015, the National Labor Relations Board issued a Decision and Order,<sup>1</sup> that, among other things, ordered Respondent Vince & Sons Co. and Jo Mo Enterprises, Inc. d/b/a Vince & Sons Pasta, alter-ego and/or Golden State Successor, to make whole discriminatees Rosario Diaz, Elvia Gutierrez, and Fernando Salazar for any loss of earnings and other benefits resulting from the Respondent's unfair labor practices in violation of Section 8(a)(3) and (1) of the Act. On August 5, 2015, the United States Court of Appeals for the Seventh Circuit entered its judgment enforcing in its entirety the Board's Decision and Order.<sup>2</sup>

A controversy having arisen over the amount of backpay due the discriminatees, on October 30, 2015, the Acting Regional Director issued a compliance specification and notice of hearing, alleging the amount due under the Board's Order and notifying the Respondent that it should file an answer by November 20, 2015, complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter of November 25, 2015,<sup>3</sup> the Region advised the Respondent that no answer to the compliance specification had been received, and that unless an answer was filed by December 2, 2015, a motion for default judgment would be filed. To date, the Respondent has not filed an answer.

On December 9, 2015, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On December 18, 2015, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allega-

tions in the motion and in the amended compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on the Motion for Default Judgment**

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and we grant the General Counsel's Motion for Default Judgment. Accordingly, we conclude that the backpay due Diaz, Gutierrez, and Salazar is as stated in the compliance specification, and we will order the Respondent to pay those amounts to the discriminatees, plus interest accrued to the date of payment.

**ORDER**

The National Labor Relations Board orders that the Respondent, Vince & Sons Co. and Jo Mo Enterprises, Inc., d/b/a Vince & Sons Pasta, alter-ego and/or *Golden State Successor*, Bridgeview, Illinois, its officers, agents, successors, and assigns, shall make whole discriminatees Rosario Diaz, Elvia Gutierrez, and Fernando Salazar, by paying them the amounts following their names, plus additional net backpay which accrues to the date the Respondent makes them valid offers of reinstatement, plus interest accrued to the date of payment, as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), and minus tax withholdings required by Federal and State laws:<sup>4</sup>

<sup>4</sup> As set forth in the compliance specification, the Respondent is also liable for the adverse tax consequences for any discriminatee receiving a lump-sum backpay award. These amounts may be updated to reflect the actual date of payment.

<sup>1</sup> 362 NLRB No. 62.

<sup>2</sup> 15–2326.

<sup>3</sup> This letter was erroneously dated December 7, 2015.

<u>Employee</u>	<u>Backpay owed</u>	<u>Excess Tax Amount</u>
Rosario Diaz	\$42,215	\$291
Elvia Gutierrez	48,290	155
Fernando Salazar	<u>16,000</u>	<u>0</u>
Totals	\$106,505	\$446
<b>Total amount due:</b>	<b>\$106,951</b>	

Dated, Washington, D.C. February 17, 2016

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Mark Gaston Pearce, Chairman

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Philip A. Miscimarra, Member

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Kent Y. Hirozawa, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD